



BILLING CODE 6750-01-P

## FEDERAL TRADE COMMISSION

### HISA Enforcement Rule

[File No. P222100]

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule; request for public comment.

**SUMMARY:** The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission. The proposed rules and rule modifications must be published in the *Federal Register* for public comment. Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification. The Authority submitted to the Commission a proposed rule on Enforcement on December 20, 2021. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule.

**DATES:** If approved, the HISA proposed rule would have an effective date of July 1, 2022. Comments must be received on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the

instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write “HISA Enforcement” on your comment and file your comment online at <https://www.regulations.gov> under docket number FTC-2022-0009. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Austin King (202-326-3166), Associate General Counsel for Rulemaking, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

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**Background:**

The Horseracing Integrity and Safety Act of 2020<sup>1</sup> recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and later proposed rule modifications take effect only if approved by the Federal Trade Commission.<sup>2</sup> The proposed rules and rule modifications must be published in the *Federal Register* for public comment.<sup>3</sup> Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.<sup>4</sup>

The Authority submitted to the Commission a proposed rule on Enforcement on December 20, 2021. The Office of the Secretary of the Commission determined that the proposal complied with the Commission’s rule governing such submissions.<sup>5</sup>

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 (the “Act”) and Federal Trade Commission Rule §1.142, notice is hereby given that, on December 20, 2021, the Horseracing Integrity and Safety Authority (“HISA” or the “Authority”) filed with the Federal Trade Commission (the “Commission”) the proposed Enforcement rule and supporting documentation as described in Items I, II, III, IV, and X below, which Items have been prepared by HISA. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

**I. Self-Regulatory Organization’s Statement of the Background, Purpose of, and**

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<sup>1</sup> 15 U.S.C. 3051 through 3060.

<sup>2</sup> 15 U.S.C. 3053(b)(2).

<sup>3</sup> 15 U.S.C. 3053(b)(1).

<sup>4</sup> 15 U.S.C. 3053(c)(1).

<sup>5</sup> 16 CFR 1.140–1.144; *see also* Fed. Trade Comm’n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021).

## **Statutory Basis for, the Proposed Rule**

### **a. Background and Purpose**

The Horseracing Integrity and Safety Act of 2020 (“Act”) recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. As part of this endeavor, the Act, in 15 U.S.C. 3053(a), directs the Authority to develop proposed rules relating to “(8) a description of safety, performance, and anti-doping and medication control rule violations applicable to covered horses and covered persons; (9) a schedule of civil sanctions for violations; and (10) a process or procedures for disciplinary hearings.”

With the review, input, and ultimate approval of the Authority’s Board of Directors, the proposed rule: (1) Sets forth a set of violations in addition to those proposed separately in the Rule 2200 Series, previously filed on December 6, 2021; (2) puts in place a schedule of civil sanctions for use in conjunction with the violations; (3) creates hearing and appeal procedures for disciplinary and accreditation decisions; and (4) sets forth rules that define the investigatory powers available to the Authority.

### **b. Statutory Basis**

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

## **II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule**

The proposed rule submitted by the Authority, which is applicable to all covered horses, covered persons, and covered racetracks, would establish rule violations and civil sanctions, procedures for disciplinary and accreditation hearings, and provisions concerning the exercise of investigatory powers by the Authority. The proposed rules

would ensure that the Authority’s enforcement activities are conducted pursuant to a set of uniform standards. The Act provides that the uniform rules established under 15 U.S.C. 3057(d)(1) shall: “(A) take into account the unique aspects of horseracing; (B) be designed to ensure fair and transparent horseraces; and (C) deter safety, performance, and anti-doping and medication control rule violations.” 15 U.S.C. 3057(d)(2).

### *Existing Standards*

In developing the rules pertaining to violations, sanctions, hearing procedures, and investigatory powers, the Authority relied to a great extent upon the rules of horseracing in these subject areas as they currently exist in racing states. Additionally, rules in the various states incorporate many of the specific standards and protocols set forth in the Association of Racing Commissioners International’s Model Rules of Racing (“ARCI Rules”). The ARCI “Model Rules” of racing and wagering are recognized worldwide as a standard for the independent and impartial regulation of horseracing as well as the conduct of pari-mutuel wagering. Relying upon the collective expertise of regulatory personnel in member jurisdictions in consultation with regulated entities, industry stakeholders, fans and individuals, ARCI committees regularly consider ways to improve and enhance the regulation of racing. In some racing states, the Model Rules have the force of law, as they have been adopted by reference statutorily or through regulatory rulemaking. In other states the Model Rules form the basis upon which rules are written, ensuring substantial uniformity in the regulation of the sport.

While state regulations vary in many details concerning medication control and safety provisions, the overall structure of the rules governing horseracing is consistent between and among the states. The rules of horseracing center around a number of

common subject areas, including the licensing of racing associations and of individual participants in horseracing, medication control rules, pari-mutuel wagering rules, the operation of various incentive funds, rules concerning the running of the race, and rules establishing disciplinary measures and hearing procedures. The basic precepts of many of the rules pertaining to violations, sanctions, hearing procedures, and investigatory powers have been in force in racing states for many years, and the Authority has reviewed key provisions in numerous states in the course of developing the Rule 8000 Series.

The Authority has also examined rules promulgated by the Financial Industry Regulatory Authority (“FINRA”). FINRA regulates and investigates the activities of brokerage firms, and a review of some of the FINRA provisions related to sanctions and investigatory powers was beneficial in the development of HISA rules in these areas.

In sum, many of the rules set forth in this 8000 Series are derived from provisions with common features in many of the state and ARCI rules. The Authority reviewed these provisions and tailored them to the Authority’s regulatory structure and goals. The process was one of analysis and incorporation of common existing standards, and did not to any significant extent require the rejection of alternate standards. In other words, for many aspects of the proposed rules, the Authority identified no reasonable alternatives to the consensus established in existing state laws.

The provisions of this Rule were made publicly available on the HISA website on November 22, 2021. Very few comments were received, but those that were received are addressed below. The ARCI Rules, several key state laws, and the FINRA provisions on which the Authority, as well as the few comments that the Authority received in its pre-submission comment-seeking process, are included in the supporting documentation

available at <https://www.regulations.gov> under docket number FTC-2022-0009.

#### **a. Rule 8100—Violations**

The violations set forth in this section are drawn from similar provisions found in the ARCI Rules and the rules of many racing states. A number of the violations prohibit interfering with or obstructing investigatory or regulatory efforts conducted by Authority personnel. The violations also include attempts to conceal violations or to intimidate witnesses to violations or individuals who might report violations. Other provisions penalize the perpetration of a fraud concerning a Covered Horse and the failure to properly register with the Authority as required by rule. The prohibitions in Rule 8100 operate together with the Racetrack Safety Rules in the separately proposed Rule 2200 Series and future anti-doping and medication control rules to provide a comprehensive enforcement scheme that will enhance the safety and integrity of horseracing.<sup>6</sup>

The violations enumerated in this rule are tailored to the unique aspects of horseracing in that violations do arise in the sport and must be penalized. It is vital to penalize violations to ensure that horseraces are conducted in a fair and transparent manner, which gives participants and the betting public confidence in the integrity of the sport. The successful prosecution of violations requires the investigation of the circumstances surrounding an alleged violation. An investigation includes interviewing the person alleged to have committed the violation, the inspection of that person's books and records upon request by investigators, and interviewing other individuals who may have knowledge of the violation. The violation provisions in Section 8100 penalize conduct that inhibits the investigatory process; such conduct includes intimidating

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<sup>6</sup> See generally 15 U.S.C. 3057(a)(2); 810 Ky. Admin. Reg. 3:020 ("Licensing of Racing Participants"), Section 15 ("License Denial, Revocation, and Suspension").

witnesses, failing to cooperate with an investigation, and failing to provide accurate information regarding an investigation. Successful and consistent prosecution of violations deters violations and ensures the integrity of the sport. The 8100 series also penalized Covered Persons and Racetracks who fail to remit fees as required under 15 U.S.C. 3052(f)(3), as funding of the Authority is a vital element in supporting the Authority's unique role in ensuring fair and transparent horseracing and deterring rule violations.

**b. Rule 8200—Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation**

The sanctions set forth in Rule 8200 apply to the Racetrack Safety rules set forth in the Rule 2200 Series and to the violations established in Rule 8100. Specifically exempted from the 8000 series are the rules under development by the Authority's Anti-Doping and Medication Committee. The rules pertaining to anti-doping and medication control violations are complex and specific to the unique aspects of medication control and will be set forth in that body of rules. Additionally, a second exemption in Rule 8200 makes clear that the sanctions in Rule 8200 do not apply to areas of regulatory activity that are not pre-empted by HISA; state regulations will continue to govern disciplinary action in these areas. By way of example, state regulations will continue to operate in the context of pari-mutuel wagering and the licensing by state racing commissions of individual participants in horseracing.

The sanctions provide the Authority with a broad range of options to apply in penalizing the violation of Authority rules. The sanctions range from the severe penalty of a lifetime ban from registration with the Authority to revocation or suspension of a

Covered Person's registration, the imposition of specified fines, or the issuance of a cease and desist order. Rule 8200 further permits the Authority to require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

The rule also includes a mechanism permitting the Authority to issue a Notice of Suspected or Actual Violation to a Covered Person in cases in which the Authority has reason to suspect that a Covered Person has violated or failed to comply with Authority rules. This mechanism requires the Authority to specify the nature of the suspected or actual violation and requires the Covered Person to respond to the Authority's notice. The Notice provision is intended in part to allow safety issues to be addressed without immediate resort to formal disciplinary action.<sup>7</sup>

The schedule of sanctions set forth in Rule 8200 provides the specific penalties that are the consequence of committing a rule violation in horseracing as conducted under the jurisdiction of the Authority. The schedule is tailored to the unique aspects of horseracing in that it imposes substantial fines upon Covered Persons. The imposition of fines is very common in the penalization of violations of horseracing rules. The sanctions also include forfeiture of purse, disqualification of horses, and changes to the order of finish in horse races, which are penalties unique to horseracing. Various other provisions can result in temporary or permanent revocation of registration with the Authority; registration is required to participate in horseracing. Additionally, racetracks can be

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<sup>7</sup> See generally FINRA Rule 8310 ("Sanctions for Violation of the Rules"); 810 Ky. Admin. Reg. 8:030 ("Disciplinary Measures and Penalties"), Sections 9 ("Disciplinary Measures by Stewards and Judges") and 10 ("Disciplinary Measures by the Commission"); Minn. Admin. R. 7897.0120 ("Disciplinary Sanctions"); Minn. Admin. R. 7897.0130 ("Schedule of Fines").

prohibited from conducting horseraces upon a finding that a racetrack safety violation has been committed.

The sanctions established under Rule 8200 work in conjunction with the violations set forth in Rule 8100 to ensure that violations are properly and consistently penalized. This deters future violations and ensures that racing participants and the betting public have confidence that horseracing is conducted in a fair and transparent manner. The Consent Decree provision is included to allow the Authority to enter into agreements with Covered Persons that will ensure that Covered Persons take actions as needed to ensure that horseracing is conducted in a fair and transparent manner consistent with preserving the integrity of the sport. Similarly, the Notice of Suspected or Actual Violation allows the Authority to identify potential or actual violations and to ensure that Covered Persons cooperate with the Authority in taking any remedial action necessary to protect the integrity of horseracing.

**c. Rule 8300 et seq.—Disciplinary Hearings and Accreditation Procedures**

The disciplinary procedures established in the Rule 8300 Series apply to Safety Violations in the Rule 2200 Series as well as the violations set forth in Rule 8100. Rule 8310 specifies that anti-doping and medication control rule violations are to be adjudicated in accordance with the specialized procedures within the medication rules. In tandem with Rule 8200, the disciplinary proceedings do not apply to areas of regulatory activity that are not pre-empted by HISA.

Rule 8320 provides a procedure pertaining to the appeal of violations. The rule specifies that stewards' rulings penalizing violation of the prohibitions relating to riding crops, shock wave therapy, and electrical or mechanical devices are appealable to the

Board of the Authority. All other rule violations of the safety rules in Rule 2200 Series are referred by the Racing Safety Committee to one of four adjudicative bodies, depending upon the seriousness of the alleged violation and the facts of the case; the Racetrack Safety Committee may conduct the initial appeal hearing itself, or it may refer the case to the state stewards, or to either the National Stewards Panel or the Arbitral Body to be established under anti-doping and medication control rules. Under this procedure, the Racetrack Safety Committee, having knowledge and expertise concerning matters of racetrack safety, will direct the case to the adjudicator best suited to decide the case.

In a parallel manner, the Board of the Authority will refer the appeal of violations of the prohibitions in Rule 8100 either to the Board itself for a hearing, to the state stewards, or to either the National Stewards Panel or the Arbitral Body to be established under anti-doping and medication control rules.

Rule 8340 sets forth notice requirements and hearing procedures to guide the adjudication of hearings before the Board of the Authority or the Racetrack Safety Committee in appeals under Rules 8320 and 8330 in those instances when the Board or the Committee refer matters to themselves for a hearing (the hearings referrals are described as “initial hearings” in Rule 8340). In the case of an initial hearing before the Board, the Board will appoint a panel of three Board members to adjudicate at the hearing. Rule 8340 establishes the procedures for the hearings.

Rule 8350 sets forth procedures for the appeal to the Board of any decision rendered by the Racetrack Safety Committee, the state stewards, the National Stewards Panel, or an Arbitral Body. Additionally, in those instances in which a panel of the Board

conducts the initial hearing, the procedures prohibit the members of the panel from participating in consideration of the appeal before the full Board. Rule 8350 establishes the procedures and standards of review to be provided upon appeal.

Rule 8360 establishes procedures appeals from any decision rendered by the Authority denying or revoking racetrack accreditation. The procedures provide that any revocation of accreditation be stayed, pending the Authority's review of the case. The Authority may permit the racetrack to make a presentation, if requested by the racetrack. One commenter suggested creating a timeframe for the request and presentation, but the Authority prefers to avoid rigid timeframes in this context. The Authority may also request additional information from any source concerning the review of the case. After considering factors enumerated in the Rule concerning the nature of deficiencies in racetrack operations, the Authority may then deny or revoke accreditation upon a two-thirds vote of a quorum of the Authority members present; alternatively, the Authority may reinstate accreditation subject to any requirements deemed necessary by the Authority to ensure that horseracing at the racetrack is conducted in a safe manner. The process in Rule 8360 is designed to provide the racetrack and the Authority the opportunity and flexibility to remedy racetrack deficiencies and ensure that horseracing is conducted safely.

Finally, Rule 8370 makes clear that decisions rendered by the Authority under Rules 8350 and 8360 constitute final civil sanctions within the meaning of 15 USC 3058, and are therefore subject to appeal and review by the Commission pursuant to the

statute.<sup>8</sup>

It is vital to penalize violations of the rules of horseracing to ensure that horseraces are conducted in a fair and transparent manner, which gives participants and the betting public confidence in the integrity of the sport. In accordance with principles of due process, persons alleged to have committed violations are entitled to a fair hearing at which they may have the opportunity to present evidence in defense of a charged violation. The provisions set forth in the Rule 8300 Series establish the rules and parameters of the hearing process. These provisions also provide for appeals to the Authority to review any decisions rendered against a Covered Person who is charged with a violation. These provisions are keyed to the unique organizational structure of the Authority. The hearing process is necessary to ensure that the penalties imposed upon Covered Persons are based upon a legitimate legal process that comports with the principles of due process. This ensures that violations are consistently and fairly penalized, which in turn deters future violations, and maintains the integrity and conduct of fair and transparent horseraces.

The Rule 8300 Series also establishes procedures for hearings to adjudicate the denial or revocation of racetrack accreditation in those instances in which racetracks are alleged to have committed violations of the Racetrack Safety rules. Racetrack safety is of course unique to horseracing and is essential to ensure that horseracing is conducted safely and in a fair and transparent manner.

#### **4. Rule 8400—Investigatory Powers**

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<sup>8</sup> See generally Minn. Admin. R. 7897.0150 (“Disciplinary Procedures”); Minn. Admin. R. 7897.0170 (“Conduct of Appeal Hearing”); Model Rules of the Association of Racing Commissioners International (“Chapter 3, Due Process and Hearings, ARCI-003-010 Proceedings by Stewards/Judges”).

The provisions set forth in Rule 8400 are common to the rules of many racing states and the ARCI rules of horseracing. These provisions establish the Authority's power of access to records and places of business used in connection with Covered Horses and authorize the seizure of medications or other items that are in violation or suspected violation of Authority rules. The rules require Covered Persons to cooperate with the Authority in investigations, and they include the duty to respond truthfully to questions posed by investigators about a racing matter. Rule 8400 also authorizes the issuance of subpoenas and oaths to witnesses. All these provisions will serve to enhance the integrity of horseracing by ensuring the effective enforcement of Authority rules.<sup>9</sup>

As stated previously, it is vital to penalize violations of the rules of horseracing to ensure that horseraces are conducted in a fair and transparent manner, which gives participants and the betting public confidence in the integrity of the sport. The successful prosecution of violations requires the investigation of all the circumstances surrounding an alleged violation. Central to any investigation is the power to gain access to the books, records, and premises of persons believed to have committed a violation; to subpoena witnesses; and to take testimony under oath of any person with knowledge of the circumstances regarding a violation. Rule 8400 specifically confers these powers upon the Authority and penalizes any obstruction or failure to comply with the investigatory powers set forth in the section.

### **III. Self-Regulatory Organization's Summary of Comments**

As encouraged by the Commission's procedural rule, beginning in November

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<sup>9</sup> See generally FINRA Rule 8210 (a) ("Provision of Information and Testimony and Inspection and Copying of Books"); Ky. Rev. Stat. 230.260(12) ("Authority of Kentucky Horse Racing Commission"); Minn. Stat. 240.21 ("Right of Inspection").

2021, prior to finalization of the submissions by the Authority to the Commission, a draft of the proposed Enforcement rule was made available to the public for review and comment on the HISA website, <https://www.hisausregs.org/>. Five comments upon the 8000 series were received. These comments were posted on the HISA Regulations Publication website at <https://www.hisausregs.org/>.

#### **IV. Self-Regulatory Organization's Responses to Comments and Discussion of Alternatives**

The following is a description of the primary subjects that received comments and the manner in which the Authority addressed those comments in developing the proposed rule submitted to the Commission, as well as the reasonable alternatives the Authority considered alongside the option ultimately proposed.

As previously mentioned, because of the relative uniformity of state approaches to defining violations, imposing sanctions, establishing hearing procedures, and providing investigatory powers, informed heavily by the ARCI Model Rules, the Authority did not identify reasonable alternatives to many of the aspects of its proposed Enforcement rule. The absence of reasonable alternatives to many aspects of Enforcement was underscored by the paucity of public comments on the proposed rule compared to the plethora of comments the Authority has received on Racetrack Safety (proposed on December 6, 2021) and Anti-Doping (yet to be proposed but under development). Most aspects of the proposed Enforcement rule received no comments, including Rule 8100 and Rule 8400.

##### *Rule 8200 comments*

One commenter inquired whether Continuing Education courses will be required in this context. Rule 2182, previously proposed to the Commission, does establish

Continuing Education requirements. Rule 8200 further provides that the Authority may enter into a consent decree or similar agreement with a Covered Person to enhance the safety and integrity of horseracing under the Act. Such a decree might require a trainer to adopt improved practices to ensure proper care for horses or might similarly require a racetrack to upgrade its facilities to enhance the safety of horseracing conducted at the track.

One commenter asked whether a consent decree “process” has been developed. The rule allows the Authority to enter into a consent decree, though the process for doing so is not strictly defined, to allow for flexibility in developing decrees.

*Rule 8300 et seq. comments*

One commenter suggested deleting Rule 8320, though without offering a reason; the Authority believes the Rule will operate to enhance the effective enforcement of racing safety and integrity.

One commenter suggested creating a timeframe for the request and presentation under Rule 8360, but the Authority prefers to avoid rigid timeframes in this context.

## **V. Legal Authority**

The rule is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

## **VI. Effective Date**

If approved by the Commission, the proposed rule will take effect July 1, 2022.

## **VII. Request for Comments**

Members of the public are invited to comment on the Authority’s proposed rule. The Commission requests that factual data on which the comments are based be

submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule to the Commission, are available for public inspection at [www.regulations.gov](http://www.regulations.gov) under docket number FTC-2022-0009.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: "The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission."<sup>10</sup> In other words, the Commission will evaluate the proposed rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

Although the Commission must approve the proposed rule if the Commission finds that the proposed rule is consistent with the Act and the Commission's procedural rule, the Commission may consider broader questions about the health and safety of horses or the integrity of horseraces and wagering on horseraces in another context: "The Commission may adopt an interim final rule, to take effect immediately, . . . if the Commission finds that such a rule is necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces."<sup>11</sup> The Commission may exercise its power to issue an interim final rule on its own initiative or in response to a petition from a member from the public. If members

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<sup>10</sup> 15 U.S.C. 3053(c)(2).

<sup>11</sup> 15 U.S.C. 3053(e).

of the public wish to provide comments to the Commission that bear on protecting the health and safety of horses or the integrity of horseraces and wagering on horseraces but do not discuss whether HISA’s proposed rule on Enforcement is consistent with the Act or the applicable rules, they should not submit a comment here. Instead, they are encouraged to submit a petition requesting that the Commission issue an interim final rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (Part 1, Subpart D)<sup>12</sup>; if it does, the petition will be published in the *Federal Register* for public comment. In particular, the petition for an interim final rule must “identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.”<sup>13</sup> As relevant here, the petition should provide sufficient information for the public to comment on, and for the Commission to find, that the requested interim final rule is “necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.”<sup>14</sup>

### **VIII. Comment Submissions**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “HISA Enforcement” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website

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<sup>12</sup> 16 CFR 1.31; *see* Fed. Trade Comm’n, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

<sup>13</sup> 16 CFR 1.31(b)(3).

<sup>14</sup> 15 U.S.C. 3053(e).

*<https://www.regulations.gov>.*

Because of the public health emergency in response to the COVID-19 outbreak and the Commission's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *<https://www.regulations.gov>* website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write "HISA Enforcement" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or

any commercial or financial information which . . . is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule §4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule §4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule §4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at [www.regulations.gov](http://www.regulations.gov)—as legally required by FTC Rule §4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule §4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

## **IX. Communications by Outside Parties to the Commissioners or Their Advisors**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

## **X. Self-Regulatory Organization's Proposed Rule Language**

### **Rule 8000 Series – Violations, Sanctions, Hearing Procedures, and Investigatory Powers**

8100 Violations

8200 Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation

8300 Disciplinary Hearings and Accreditation Procedures

8310 Application

8320 Adjudication of Violations of Established in the Rule 2200 Series

8330 Adjudication of Rule 8100 Violations

8340 Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority

8350 Appeal to the Board

8360 Accreditation Procedures

8370 Final Civil Sanction

8400 Investigatory Powers

### **8000. Violations, Sanctions, Hearing Procedures, and Investigatory Powers**

#### **8100. Violations**

Violations under this Rule shall include:

- (a) Failure to cooperate with the Authority or an agent of the Authority during any investigation;
- (b) Failure to respond truthfully, to the best of a Covered Person's knowledge, to a question of the Authority or an agent of the Authority with respect to any matter under the jurisdiction of the Authority;
- (c) Tampering or attempted tampering with the application of the safety, performance, or anti-doping and medication control rules or process adopted by the Authority, including:

- (1) Intentional interference, or an attempt to interfere, with an official or agent of the Authority;
- (2) Procurement or the provision of knowingly false information to the Authority or agent of the Authority; and
- (3) The intimidation of, or an attempt to intimidate, a potential witness;
- (d) Assisting, encouraging, aiding, abetting, conspiring, covering up, or any other type of intentional complicity involving a racetrack safety violation, or the violation of a period of suspension or ineligibility;
- (e) Threatening or seeking to intimidate a person with the intent of discouraging the person from the good faith reporting to the Authority, an agent of the Authority or the Commission, of information that relates to:
  - (1) a suspected or alleged violation of a rule in the Rule 2200 Series; or
  - (2) a suspected or alleged noncompliance with a rule in the Rule 2200 Series;
- (f) Failure to comply with a written order or ruling of the Authority or an agent of the Authority pertaining to a racing matter or investigation;
- (g) Failure to register with the Authority, making a knowingly false statement or omission of information in an application for registration with the Authority, or failure to advise the Authority of material changes in the application information as required under any provision in Authority regulations;
- (h) Perpetrating or attempting to perpetrate a fraud or misrepresentation in connection with the care or racing of a Covered Horse;
- (i) Failure to remit fees as required under 15 U.S.C. 3052(f)(3); and
- (j) Failure by a Racetrack to collect equitable allocation amounts among Covered Persons

in conformity with the funding provisions of 15 U.S.C. 3052(f)(3) and any rules pertaining thereto.

**8200. Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation**

(a) Application. This Schedule shall apply to any violation of, or failure to comply with, the Act or regulations promulgated by the Authority by a Covered Person, except for:

(1) anti-doping and medication control rule violations as established in the Rule 3000 Series<sup>15</sup>; and

(2) State laws or regulations not pre-empted by 15 U.S.C. 3054(b).

(b) Imposition of Sanction. The Authority, the Racetrack Safety Committee, the stewards, any steward or body of stewards selected from the National Stewards Panel, or an

Arbitral Body, after any hearing required to be conducted in accordance with the Rule

7000 Series and upon finding a violation or failure to comply with the regulations of the

Authority with the exceptions identified in paragraph (a), may impose one or more of the following sanctions on a Covered Person for each violation of the rules of the Authority:

(1) for a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2273 relating to the use of other electrical or mechanical devices, or a violation of Rule 2280 relating to the use of the riding crop, impose the penalties set forth in Rules 2272, 2274, 2282, and 2283;

(2) impose a fine upon a Covered Person in the following amounts:

(i) up to \$50,000.00 for a first violation, or

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<sup>15</sup> The Commission notes that the 3000 Series and 7000 Series rules have not yet been proposed by the Authority. This and other cross-references to forthcoming rule proposals will be effective if such rules are proposed by the Authority and approved by the Commission under the same process as this proposed rule. The 2000 Series rules were published in the Federal Register on January 5, 2022. 87 FR 435.

- (ii) from \$50,000.00 to \$100,000.00 for a second violation of the same or similar nature to a prior violation, or any violation that due to its nature, chronicity, or severity poses an actual or potential threat of harm to the safety, health, and welfare of Covered Persons, Covered Horses, or the integrity of Covered Horseraces;
- (3) deny or suspend the registration of a Covered Person for a definite period, probationary period, or a period contingent on the performance of a particular act;
- (4) revoke the registration of a Covered Person subject to reapplication at a specified date;
- (5) impose a lifetime ban from registration with the Authority;
- (6) bar a Covered Person from associating with all Covered Persons concerning any matter under the jurisdiction of the Commission and the Authority during the period of a suspension;
- (7) impose a temporary or permanent cease and desist order against a Covered Person;
- (8) require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;
- (9) deny or require the forfeiture of purse money, disqualify a horse, or make changes to the order of finish in Covered Races as consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;
- (10) censure a Covered Person;
- (11) prohibit a Racetrack from conducting any Covered Horserace; or
- (12) impose any other sanction as a condition of participation in horseracing as deemed

appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case, and that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(c) Consent Decrees. The Authority shall have the discretion to enter into a consent decree or other similar agreement with a Covered Person as necessary to promote the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(d) Notice of Suspected or Actual Violation.

(1) The Authority or the Racetrack Safety Committee may issue a Notice of Suspected or Actual Violation to a Covered Person in any case in which the Authority has reason to believe that the Covered Person has violated or has failed to comply any provision of regulations of the Authority. The notice shall:

- (i) identify the provision or provisions which the Covered Person is believed to have violated;
- (ii) specify with reasonably particularity the factual basis of the Authority's belief that the provision has been violated; and
- (iii) provide the Covered Person at least 7 days to respond, or a longer period as deemed appropriate and specified in the Notice by the Authority based upon the seriousness of the violation or the imminence of risk.

(2) Upon receipt of the Notice of Suspected or Actual Violation, the Covered Person shall respond in writing to the Authority within the time period specified in the notice. The Covered Person shall include in the response:

- (i) a statement by the Covered Person admitting the violation, or explaining the

reasons why the Covered Person believes that a violation has not occurred;

(ii) all relevant details concerning the circumstances of the suspected or actual violation, including the results of any investigation undertaken by the Covered Person of the circumstances, and identification of any persons responsible for the circumstances; and

(iii) a detailed explanation of any remedial plan the Covered Person proposes to undertake to cure the suspected or actual violation, and the date of the expected completion of the remedial plan.

### **8300. Disciplinary Hearings and Accreditation Procedures**

#### **8310. Application**

An alleged violation or failure to comply with the provisions of the Rule 2200 Series and any alleged violation of the rules set forth in Rule 8100 shall be adjudicated in accordance with this Rule 8300 Series, except that:

(a) An alleged violation of the anti-doping and medication control rule provisions in the Rule 3000 Series shall be adjudicated in accordance with the procedures set forth therein; and

(b) This regulation shall not apply to the adjudication of violations arising under state laws, racing rules, and regulations not preempted under 15 U.S.C. 3054(b).

#### **8320. Adjudication of Violations of Established in the Rule 2200 Series**

(a) Any ruling by the stewards finding a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2280 relating to the use of the riding crop, or a violation of Rule 2273 relating to the use of other electrical or mechanical devices, may be appealed to the Board of the Authority under the procedures described in

Rule 8330. An appeal shall be filed in writing within 10 days of the issuance of the ruling by the stewards.

(b) With regard to any matter involving an alleged violation of a rule in the Rule 2200 Series other than those set forth in paragraph (a) above, the Racetrack Safety Committee may, at its discretion and taking into account the seriousness of the alleged violation and the facts of the case:

- (1) Refer the matter to the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (2) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (3) Refer the matter to the stewards for adjudication in accordance with the procedures of the applicable state jurisdiction; or
- (4) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

### **8330. Adjudication of Rule 8100 Violations**

With regard to any matter involving an alleged violation of a rule established in Rule 8100, the Board of the Authority may at its discretion and taking into account the seriousness of the violation and the facts of the case:

- (a) Refer the matter to the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (b) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;
- (c) Refer the matter to the stewards for adjudication in accordance with the procedures of the applicable state jurisdiction; or

(d) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

**8340. Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority**

(a) An initial hearing before the Board shall be conducted by a panel of three Board members. The Board chair shall appoint the panel members and shall also designate one of them as the chair of the panel.

(b) An initial hearing before the Racetrack Safety Committee shall be heard by a quorum of the Racetrack Safety Committee. The Racetrack Safety Committee chair shall act as the chair of the hearing panel unless the Chair is unavailable, in which case the Racetrack Safety Committee chair shall designate a member of the quorum to act as the chair of the panel.

(c) Persons entitled to notice of a hearing before the Board or the Racetrack Safety Committee shall be informed not less than twenty (20) days prior to the hearing of:

- (1) the time, place, and nature of the hearing;
  - (2) the legal authority and jurisdiction under which the hearing is to be held;
  - (3) a description of the alleged violation, specifying by number the rule allegedly violated; and
  - (4) a statement of the factual basis of the alleged violation in sufficient detail to provide adequate opportunity to prepare for the hearing.
- (d) At any time prior to, during, or after the hearing, the Board or the Racetrack Safety Committee in its discretion may require the submission of written briefs or other information as will assist in the hearing of the matter.
- (e) All testimony in proceedings before the Board or the Racetrack Safety Committee

shall be given under oath.

(f) The burden of proof shall be on the party alleging the violation to show, by a preponderance of the evidence, that the Covered Person has violated or failed to comply with a provision of or is responsible for a violation of a provision of the Authority's regulations.

(g) The Board or the Racetrack Safety Committee shall allow a full presentation of evidence and shall not be bound by the technical rules of evidence. However, the Board or the Racetrack Safety Committee may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Board or the Racetrack Safety Committee shall have the authority to determine, in its sole discretion, the weight and credibility of any evidence or testimony. The Board or the Racetrack Safety Committee may admit hearsay evidence if it determines the evidence is of a type that is commonly relied on by reasonably prudent people. Any applicable rule of privilege shall apply in hearings before the Board or the Committee.

(h) A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such limited cross-examination as may be required for a full and true disclosure of the facts.

(i) The Board or the Racetrack Safety Committee shall issue to all parties within 30 days of the close of the hearing a written decision setting forth findings of fact, conclusions of law and the disposition of the matter including any penalty imposed. If the thirtieth day falls on a Saturday, Sunday, or holiday, then the written decision shall be issued on the next working day immediately following the Saturday, Sunday, or holiday.

#### **8350. Appeal to the Board**

(a) Any decision rendered by the Racetrack Safety Committee, the stewards, the National Stewards Panel, or an Arbitral Body, may be appealed on the record to the Board. The decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(b) Any decision rendered by an initial Board hearing panel may be appealed on the record to the Board, to be heard by a quorum of the Board which shall not include the Board members who were on the panel in the initial hearing. The decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(c) An appeal shall not automatically stay the decision. A party may request the Board to stay the decision. The Board shall order a stay for good cause shown.

(d) A party to the decision may appeal to the Board by filing with the Board a written request for an appeal within 10 days of receiving a written order. The appeal request shall contain the following information:

(1) the name, address, and telephone number, if any, of the appellant;

(2) a description of the objections to the decision;

(3) a statement of the relief sought; and

(4) whether the appellant desires to be present in person at the hearing of the appeal.

(e) The Board shall set a date, time, and place for the hearing. Notice shall be given to the appellant in writing and shall set out the date, time, and place of the hearing, and shall be served personally or sent by electronic or U.S. mail to the last known address of the appellant. If the appellant objects to the date of the hearing, the appellant may obtain a continuance, but the continuance shall not automatically stay imposition of a sanction or

prolong a stay issued by the Board.

(f) Upon review of the decision which is the subject of the appeal, the Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.

(g) Upon completing its review, the Board may:

(1) Accept the decision;

(2) Reject or modify the decision, in whole or in part;

(3) Remand the matter, in whole or in part, to the stewards, Racetrack Safety Committee, the National Stewards Panel, or an Arbitral Body, as the case may be, for further proceedings as appropriate; or

(4) Conduct further proceedings on the matter as appropriate, including but not limited to requiring the submission of written briefs or, in extraordinary circumstances and at the Board's discretion, the taking of additional testimony before the Board under oath.

(h) The Board shall issue its written decision based on the record and any further proceedings or testimony. A copy of the Board's decision shall be served upon all parties by first class mail, electronic mail, or personal service.

(i) The decision of the Board shall be the final decision of the Authority.

#### **8360. Accreditation Procedures**

(a) Any decision issued by the Authority denying or revoking racetrack accreditation may:

(1) Be appealed within 10 days by the Racetrack to the Authority for a de novo hearing reviewing the Authority's decision; or

(2) Reviewed by the Authority on its own initiative.

- (b) The Authority's order revoking accreditation shall be stayed automatically pending review of the decision by the Authority.
- (c) At its discretion, the Authority may request and consider any additional information from any source that may assist in the review.
- (d) The Racetrack may request to make a presentation before the Authority concerning racetrack safety and any remedial efforts proposed to be undertaken by the Racetrack. At its discretion, the Authority may permit the Racetrack to make such presentation.
- (e) In conducting its review, that Authority may consider all factors that it deems appropriate, including but not limited to:
- (1) The extent and magnitude of any deficiencies in racetrack operations conducted at the Racetrack;
  - (2) The threat posed by the deficiencies to the safety and integrity of horseracing conducted at the Racetrack;
  - (3) The adequacy of the efforts the Racetrack proposes to undertake or has undertaken to remedy all deficiencies at the Racetrack;
  - (4) The likelihood and timeframe within which compliance will be achieved by the Racetrack, given the resources available to the Racetrack and the past record of the Racetrack in achieving and maintaining compliance with the rules of the Authority; and
  - (5) Any other factors the Authority deems relevant to its review.
- (f) Upon completing its review, the Authority may take one or more of the following actions:
- (1) Order that the Racetrack's accreditation be denied or revoked, upon a vote in favor of denial or revocation by two-thirds of a quorum of the members of the Authority;

- (2) Reinstate accreditation subject to any requirements the Authority deems necessary to ensure that horseracing will be conducted in a manner consistent with racetrack safety and integrity. The Authority may also impose a fine upon reinstatement in amount not to exceed \$50,000.00. The Authority may require the Racetrack to report at prescribed intervals on the status of racetrack safety operations and remedial efforts to improve safety pursuant to the Authority's racetrack safety rules; or
- (3) Prohibit a Racetrack from conducting any Covered Horserace.

#### **8370. Final Civil Sanction**

Any decision rendered by the Board of the Authority under Rule 8350, or the Authority under Rule 8360, shall constitute a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

#### **8400. Investigatory Powers**

(a) The Commission, the Authority, or their designees:

- (1) Shall have free access to the books, records, offices, racetrack facilities, and other places of business of Covered Persons that are used in the care, treatment, training, and racing of Covered Horses, and to the books, records, offices, facilities, and other places of business of any person who owns a Covered Horse or performs services on a Covered Horse; and
- (2) May seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of any provision of 15 U.S.C. 57A or the regulations of the Authority.

(b) A Covered Person shall:

- (1) Cooperate with the Commission, the Authority or their designees during any

investigation; and

(2) Respond truthfully to the best of the Covered Person's knowledge if questioned by the Commission, the Authority, or their designees about a racing matter.

(c) A Covered Person or any officer, employee or agent of a Covered Person shall not hinder a person who is conducting an investigation under or attempting to enforce or administer any provision of 15 U.S.C. 57A or the regulations of the Authority.

(d) The Commission or the Authority may issue subpoenas for the attendance of witnesses in proceedings within their jurisdiction and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to matters within the jurisdiction of the Commission or the Authority.

(e) Failure to comply with a subpoena or with the other provisions of this Rule may be penalized by the imposition of one or more penalties set forth in Rule 8200.

(f) The Commission or the Authority may administer oaths to witnesses and require witnesses to testify under oath in matters within the jurisdiction of the Commission or the Authority.

By direction of the Commission.

**Joel Christie,**

*Acting Secretary.*

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